FragranceNet.com, Inc. v. FragranceX.com Inc. Doc. 51 Att. 1

EXHIBIT A

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FRAGRANCENET.COM, INC.,

Plaintiff,

-v-

FRAGRANCEX.COM, INC. and JOHN DOES 1-20,

Defendants.

CV 06 2225 (JFB) (AKT)

DEFENDANT'S 30(b)(6) DEPOSITION NOTICE TO PLAINTIFF

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, defendant FragranceX.Com, Inc. will take the deposition upon oral examination of plaintiff, FragranceNet.Com, Inc., by one or more representatives designated by plaintiff to testify on the subjects specified in this Notice by stenographic means before a Notary Public or some other person authorized to administer oaths, who is not an attorney, or an employee of an attorney, for any party or prospective party herein and is not a person who would be disqualified to act as a juror because of interest or consanguinity or affinity to any party herein, commencing at 10:00 a.m. on Monday, August 20, 2007, and continuing from day to day thereafter until completed. The examination will take place at the offices of Moses & Singer LLP, 405 Lexington Avenue, 12th Floor, New York, New York 10174-1299.

PLEASE TAKE FURTHER NOTICE that, pursuant to Rule 30(b)(6), plaintiff shall designate its witness(es) by July 20, 2007.

DEFINITIONS

The definitions set forth in Rule 26.3 of the Local Civil Rules for the Southern and Eastern Districts of New York are incorporated herein by reference.

1. "Defendant" refers to defendant FragranceX.Com, Inc.

2. "Document" is defined in accordance with Rule 26.3 of the Local Rules for the Southern and Eastern Districts of New York, and it is noted that this definition includes documents in electronic form. For documents in electronic form, defendant requests all such documents be produced in their native file format.

3. "Registered Photographs" means the photographs in which copyright was registered in Certificates of Registration VA 1-340-782, VA 1-340 783, and VA 1-340-784.

4. "Website" means plaintiff's website.

SUBJECTS OF TESTIMONY

If discovery is bifurcated between damages and liability, no witness need be identified or supplied concerning the subjects of testimony labeled "**DAMAGES**" until and unless discovery proceeds to the damages phase.

1. Photographs, drawings or other images of products shown on the Website other than the Registered Photographs.

2. The Registered Photographs.

3. Defendant's alleged copies of the Registered Photographs.

4. The making of the Registered Photographs, including without limitation:

   a. the decision to have each of the photographs made,

   b. the identity of all individuals who participated in any way in the making of the photographs,

   c. the selection or arrangement of the matter to be photographed, the selection or implementation of the background, lighting, or use of shadow or angle, or any other elements of creative authorship claimed by plaintiff concerning the Registered Photographs,

d. communications concerning the making of the Registered Photographs,

e. the expense of making the Registered Photographs, and

f. the employment of all individuals who participated in any way in the making of the Registered Photographs, including without limitation any contract or agreement with those individuals, records of meetings with those individuals and payments made for the making of the Registered Photographs.

5. The registration of claims to copyright in the Registered Photographs, including the decisions to register such a claim in each of the Registered Photographs.

6. **DAMAGES** Plaintiff's sales of each product sold by plaintiff since the creation of the Website offered for sale by plaintiff on or through the Website.

7. Communications with any person or entity concerning the making, display or other use of any of the Registered Photographs, whether to seek or receive permission to do so, or in the nature of a claim for infringement of copyright, trademark or other rights, or otherwise, including without limitation:

a. Communications with any manufacturer or distributor of any product depicted by plaintiff on the Website concerning any photographs, drawings or other images depicting any such product, including without limitation any discussion of copyright issues or of the granting or refusing of permission to make or display photographs, drawings or other images of the products.

b. Claims made against plaintiff for copyright or trademark infringement, trade dress infringement, passing off, false advertising or any other claims in the nature of unfair competition or based upon the unconsented use of any intellectual property in connection with any photographs, drawings or other images depicting any product on the Website, including without limitation lawsuits, claim letters, or claims made orally or by any other means.

8. **DAMAGES** All revenue generated as a result of the use of the Registered Photographs on the Website, as alleged in paragraph 1 of the Second Amended Complaint.

9. The providing of copies of any of the Registered Photographs by defendant to other parties, as alleged in paragraph 2 of the Second Amended Complaint.

10. The efforts and expenditures alleged in paragraph 11 of the Second Amended Complaint, and the time, effort and money referred to in paragraph 12 of the Second Amended Complaint..

11. The market share or other indicia of success of plaintiff's on-line perfume store, as alleged in paragraph 11 of the Second Amended Complaint.

12. The ownership of copyright in the Registered Photographs, as alleged in paragraph 16 of the Second Amended Complaint.

13. The discovery by plaintiff of defendant's copying of any of the Registered Photographs, as alleged in paragraph 17 of the Second Amended Complaint.

14. Defendant's copying of any of the Registered Photographs, as alleged in paragraph 17 of the Second Amended Complaint.

15. The communications between plaintiff and defendant alleged in paragraphs 18-20 of the Second Amended Complaint.

16. The violation of plaintiff's rights under 17 U.S.C. §104(a), as alleged in paragraph 23 of the Second Amended Complaint.

17. **DAMAGES** The harm, damage, injury and continuing damage to plaintiff as alleged in paragraphs 26 and 27 of the Second Amended Complaint, including without limitation diminution of or loss of sales.

Dated: June 18, 2007
New York, New York

MOSES & SINGER LLP
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